



Fast Track Regulation Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC105-20-10 et seq.
Regulation title	Regulations Governing the Practice of Optometry
Action title	Qualifications for Licensure by Examination
Document preparation date	5/29/07

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board has amended requirements for Licensure by Examination to include provisions currently found in section 15, Licensure by Endorsement for applicants who have been previously licensed in other states. The additional requirements include an attestation that the applicant is not a respondent in a pending or unresolved malpractice claim or in any pending or unresolved board action, that the license is unrestricted, any continuing education requirements have been met, and the applicant has not committed any act which would constitute a violation of laws in Virginia.

The Board has also added subsection E to authorize the Board to require an applicant who passed the board examination more than five years ago to either retake all or portions of the examination or take board-approved continuing education unless the applicant can document active practice for at least 36 out of the past 60 months.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 15, 2007, the Board of Optometry took action to amend 18VAC105-20-10 et seq., Regulations Governing the Practice of Optometry, through the fast-track regulatory process.

On May 18, 2007, the Board voted to withdraw the fast-track action approved on March 15th in order to add a subsection E to the proposed amendments.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

In Optometry, an applicant who has been licensed on the basis of passage of the national examination may be licensed by examination; an applicant who has not passed the national examination and was licensed based on a state examination at the time of initial licensure may be licensed by endorsement. In either case, the Board has an obligation to ensure that an applicant who has been licensed and practicing in another state has not practiced in a negligent manner, has maintained continued competency in his practice and has not committed an act which would be considered unprofessional conduct in Virginia. To allow an optometrist whose license is

restricted in another state or who has a history of malpractice or violations of law or regulation to be licensed in Virginia would place Virginia consumers at risk. As the practice of optometry has expanded to include prescribing and treating with controlled substances, it is even more important to ensure the safety and competency of those being licensed by this Board.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action is not controversial, as it is current policy of the Board to request the proposed information in the application package and has never been questioned by an applicant.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The regulation has been reviewed for consistency with law and clarity. The substantive changes include the addition of requirements for licensure by examination relating to compliance with law and competency to practice – the same as current requirements for licensure by endorsement. The additional requirements would only apply to those applicants who have held a license in another jurisdiction and not to those who are receiving their first license based on passage of the national examination. The additional subsection E will require that someone who took the licensure examination more than five years ago has either been engaged in active practice in another jurisdiction or has completed CE courses or has retaken some portion of the examination to ensure that he is currently competent to practice.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There are no disadvantages to the public of these amendments. The public is better protected by requiring information on malpractice, continuing education compliance and any possible acts of unprofessional conduct that may have occurred in a state in which an applicant is currently licensed.

There are no advantages or disadvantages to the agency or the Commonwealth.

There are no other pertinent matters of interest.

Economic impact

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The agency will incur some one-time costs (less than \$1,000) for mailings and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings or distribute notices by email. There are no ongoing expenditures related to this amendment. As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals who may be affected would be applicants for licensure by examination who already hold a license in another jurisdiction.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The Board typically licenses 60 to 80 persons by examination each year. Of that number, approximately 80% would be new graduates seeking their initial license. Approximately 20% (12 to 16 persons) applying for licensure by examination would already hold a license in another state.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There would be no additional costs to the affected entities. The information and verifications requested are already part of the application package and are already being provided. If an applicant took the examination more than 5 years ago, he may be required to complete hours of continuing education if he has not actively practiced in another state for at least 36 of the past 60 months.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The alternative to a regulatory action would be to continue requesting the information specified in subsection D of section 10 in the amended regulation on the application package. To date, no applicant has questioned the authority of the Board to require such information or verification, but if challenged, the Board would have to rely on sections of the Code that may not specifically address these requirements. Likewise, a guidance document would express the intent of the Board in its interpretation of the law and regulation but would not be enforceable as a requirement for licensure. The only alternative that meets the essential purpose of the action – to protect the public from a problematic or incompetent optometrist coming from another state – is the adoption of an amendment to regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

The change proposed in this fast-track action is the addition of subsection D of section 10 for licensure by examination. The requirements specified in subsection D for applicants licensed in another jurisdiction are all currently required for applicants for licensure by endorsement.

Subsection D would specify the following:

D. If an applicant has been licensed in another jurisdiction, the following requirements shall apply:

1. The applicant shall attest that he is not a respondent in a pending or unresolved malpractice claim; and

2. Each jurisdiction in which the applicant is currently licensed shall verify that:

a. The license is full and unrestricted, and all continuing education requirements have been completed, if applicable;

b. The applicant is not a respondent in any pending or unresolved board action; and

c. The applicant has not committed any act which would constitute a violation of §54.1-3204 or §54.1-3215 of the Code of Virginia.

The applicant will be asked to provide an attestation about any pending or unresolved malpractice claim. If there is such a claim, the applicant would not be approved for licensure until he had provided any additional information necessary for a review by a committee of the Board. Likewise, the applicant would be required to have the jurisdiction in which he is currently licensed provide information about the status of the license and any continuing education requirements, any pending or unresolved board actions, and any evidence of prior actions in which the applicant committed an act that would constitute a violation of Virginia law. Again, if the verification from another state indicates a lack of compliance with law or regulation or a restriction on the license, the applicant would be requested to provide additional information and may be required to appear before a committee of the Board prior to a decision on licensure.

Subsection E would specify the following:

An applicant who did not complete all parts of the board-approved examination within five years prior to the date of receipt of their application for licensure by this board may be required to retake all or any part of the board-approved examination or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 36 of the past 60 months immediately prior to submission of an application for licensure.

The Board is concerned about an applicant who may have completed the national examination a number of years ago but never practiced optometry. If the applicant has done nothing since the passage of the examination to ensure competency (active practice, continuing education, etc.), the Board does not believe the applicant should be licensed for independent practice on patients in Virginia, but it presently has no grounds for denial of such a license. Regulations for licensure by endorsement (persons who were licensed in another state based on a comparable examination) are required to demonstrate that they have been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application, so this requirement for licensure by examination would be consistent.